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SENATE BILL 1001
By Norris

AN ACT to amend Tennessee Code Annotated, Title 53; Title 56; Title 63 and Title 71, relative to the "TennCare Pharmacy Cost Containment Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act may be cited as the “TennCare Pharmacy Cost Containment Act of 2003”.

SECTION 2. The general assembly finds that:

(1) In this time of economic difficulty, Tennessee needs to maximize its financial resources, especially in the TennCare program.

(2) Prudent management of the TennCare pharmacy program is a keystone to maximizing TennCare dollars.

(3) Other states have wisely managed their pharmacy programs by implementing and maintaining a process for managing the drug therapies of recipients who are using significant numbers of prescribed drugs each month.

(4) Disease management programs have provided significant cost containment in other states.

(5) Fraud and abuse programs have provided cost savings in other states.

(6) Tennessee should require brand-name pharmaceutical manufacturers and generic manufacturers to provide best-price rebates or fifteen and one-tenth percent (15.1%) rebates, whichever is greater. Most states' rebates average twenty percent (20%) or more. Should TennCare maximize these rebates, an additional estimated one hundred million dollars ($100,000,000) or more would be rebated to the state general fund.

(7) Every study commissioned on TennCare has recommended a single statewide formulary. A different formulary in every MCO is confusing for patients, pharmacists and physicians.

(8) Many of the *Grier* appeals would not be filed if the state adopted a clinicallyappropriate single statewide formulary. *Grier* appeals cost the state at least forty million dollars($40,000,000) per year and eighty percent (80%) of those appeals are pharmacy-related.

(9) Recognizing that time is of the essence in budget matters, this bill is enacted to provide pharmacy cost containment for the TennCare program in a manner that is patient sensitive and seeks to avoid further litigation involving the TennCare program.

SECTION 3. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following new section:

Section 71-5-194.

(a) To effectively manage high utilizers of TennCare prescription drugs:

(1) The TennCare bureau shall maintain and implement a process for managing the drug therapies of recipients who are using significant numbers of prescribed drugs each month. The management process may include, but is not limited to, comprehensive, physician-directed medical-record reviews, claims analyses, and case evaluations to determine the medical necessity and appropriateness of a patient's treatment plan and drug therapies. The bureau may contract with a private organization to

provide drug-program-management services. Such management shall be in coordination with the TennCare centers of excellence or the TennCare drug utilization board.

(2) The TennCare bureau may place limits on quantities dispensed or the frequency of refills for any covered drug for the purpose of:

(A) Preventing fraud, abuse, waste, overutilization or inappropriate utilization; or

(B) Implementing a disease management program; however, the bureau of TennCare may not limit or restrict access to legend drugs when used as approved by the federal food and drug administration to treat mental illness, HIV or AIDS. Monthly prescription limits may be imposed on recipients who are using nine (9) or more prescribed drugs per month, but the TennCare bureau shall provide a prior approval procedure whereby such limits are waived when the patient's medical condition warrants prescriptions beyond the monthly limit.

(b) To effectively manage prescription drug prices:

(1) The bureau of TennCare or its agency shall administer the pharmacy program in a manner which qualifies for rebates from brand-name pharmaceutical manufacturers of at least fifteen and one-tenth percent (15.1%) of the average manufacturer's price or best-price rebates, whichever rebate is greater, in accordance with 42 U.S.C. § 1396 r-8.

(2) The bureau may enter into arrangements that require manufacturers of generic drugs prescribed to Medicaid recipients

to provide rebates of at least fifteen and one-tenth percent (15.1%) of the average manufacturer price for the manufacturer's generic products.

(3) The bureau may limit reimbursement for a prescription to the multisource generic equivalent drug whenever the generic equivalent net price is cheaper. Patients who insist that a prescription be filled with a brand-name drug when a multisource generic is available, shall be required to pay for those prescriptions. Exceptions may be made by the bureau for narrow therapeutic index drugs.

(4) The bureau shall implement a state maximum allowable cost list for prescription drugs.

(5) The bureau shall establish a pharmacy and therapeutics committee which shall be the committee that is required by federal law should the bureau chose to design a formulary or should the bureau institute a preferred or non-preferred drug list. The committee shall be appointed by the governor or the governor's designee and shall consist of physicians, pharmacists and those who pay rebates. Each committee member must participate in the TennCare program.

(c) To provide for patient safety and to strive to avoid litigation-related costs:

(1) The bureau of TennCare shall establish a single statewide uniform formulary. However, the bureau may not require a physician to switch a patient from a medication previously prescribed for the patient

unless such switch is warranted by the patient's condition as initiated by the physician; and

(2) Decisions regarding limitations to be imposed on any drug or its use for a specific indication shall be based on sound clinical evidence found in labeling, drug compendia and peer review clinical literature pertaining to use of the drug in the relevant population.

SECTION 4. All meetings and procedures provided in this act shall be open and subject to the provisions of title 8, chapter 44. To accomplish the purposes of this act, the bureau shall promulgate and enforce all necessary rules and regulations in accordance with the Uniform Administrative Procedures Act, compiled at title 4, chapter 5. If any provision or clause of this act or application thereof to any corporation, person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this part which can be given effect without the invalid provision or application, and to this end, the provisions of this part are declared to be severable.

SECTION 5. This act shall take effect upon becoming law, the public welfare requiring it.